

REMARKS

This communication is a full and timely response to the final Office Action dated December 10, 2009. Claims 1, 3-8 and 10-12 remain pending, where claims 8 and 10-12 are withdrawn from consideration, and claim 9 was previously cancelled. By this communication, claim 1 is amended and claim 2 is cancelled. Support for the amended subject matter can be found, for example, in paragraphs 48-54 and 57-60 of the disclosure.

In numbered paragraph 3 on page 2 of the Office Action, claims 1-7 are rejected under 35 U.S.C. §101 for allegedly being directed to non-statutory subject matter. Applicants respectfully traverse this rejection. However, in an effort to expedite prosecution claim 1 is amended in a manner that addresses the Examiner's concerns. Withdrawal of this rejection, therefore, is respectfully requested.

In numbered paragraph 5 on page 3 of the Office Action, claims 1-6 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by *Montanari et al* (U.S. Patent No. 5,478,990). Applicants respectfully traverse this rejection.

As variously shown in Figures 1-4, Applicants' exemplary method for tracking production of a product in a plant for liquid foods includes allocating a unit identity to a production unit. The unit identity can be implemented by means of figures, letters, or a combination of both. The unit identity is registered in a database. A material quantity defines a certain product by volume or other quantities. When a product is produced in a plant for liquid foods, different material volumes or quantities of the product are transported. The manner or type of transport may encompass all or a portion of an entire material volume or quantity. The transport may be defined as a number of events that constitute transporting the product between the different

production units. Each event has a source and a destination, which may be associated to different production units. The events are registered in a table of the database and can be allocated a unique event identity. The events are registered with references to the material quantity work identity and with respect to the unit identities of the source or destination.

Independent claim 1 broadly encompasses the foregoing features, by reciting, among other features, registering events in the plant with the first work identity of the material quantity of the material, wherein the event identifies a transport of at least a portion of the material quantity from a source production unit in the plant with reference to the unit identity allocated to the source production unit in the plant and/or to a destination production unit in the plant with reference to the unit identity allocated to the destination production unit in the plant.

Montanari discloses a method used to track the production history of food products. In this process, tracking numbers are assigned to cattle prior to slaughter (A-TN), and various portions of the carcass of the cattle following slaughter (Q-TN, Q-PIN, and P-TN). Moreover, the process provides for tags to be associated with packaging (B-PIN) and containers (L-PIN) used to hold meat products during processing. See Montanari, col. 9, line 51 - col. 10, line 9.

During processing, the tracking numbers of the cattle and cattle carcass are used to determine the processing location, weight of part, type of body part, etc. When a body part is transported to a different location, the information associated with at least the location of processing is entered into a database in association with the tracking number of the body part. With respect to the holding containers, *Montanari* discloses that a first holding container is assigned a production

information number and is filled with meat portions. Once full, the holding container is emptied into a meat grinder. The ground meat is then put into a second holding container, which is assigned the same production information number as the first holding container. *Id.*, col. 16, lines 7-18.

Given that *Montanari* discloses that the two holding containers are provided with the same identification number eventhough the first container is at the input of the grinding process and the second container is at the output of the grinding process, one of ordinary skill would understand that this reference cannot and does not disclose or suggest registering events in the plant with the first work identity of the material quantity of the material, wherein the event identifies a transport of at least a portion of the material quantity from a source production unit in the plant with reference to the unit identity allocated to the source production unit in the plant and/or to a destination production unit in the plant with reference to the unit identity allocated to the destination production unit in the plant, as recited in claim 1. Because both containers have the same identification number there is no reasonable basis for concluding that an event in the plant, such as meat grinding can be registered. At best, the containers can indicate a location in the plant at which the meat products are stored, but cannot reasonably be interpreted as identifying a processing event that has taken place.

As set forth in MPEP § 2131, to anticipate a claim, the reference must teach every element of the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "[U]nless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it

cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102." *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008) (emphasis added).

Since *Montanari* fails to disclose or suggest every feature and/or the combination of features recited in claim 1, Applicants submit that a *prima facie* case of anticipation with respect to claims 1-6 has not been established. Withdrawal of this rejection is respectfully requested.

In numbered paragraph 13 on page 5 of the Office Action, claim 7 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Montanari et al* in view of "Official Notice". Applicants respectfully traverse this rejection.

In numbered paragraph 14, the Examiner's rationale for rejecting claim 7 is based on the obvious combination of *Montanari* and *Baird*. This reasoning, however, is inconsistent with the rejection presented in numbered paragraph 13 as noted above. Furthermore, the Examiner has failed to cite an associated document name, number, or title for the alleged prior art *Baird*. It is unclear whether Applicants are expected to respond to the combination of *Montanari* and *Official Notice* as presented in numbered paragraph 13 or to the combination of *Montanari* and *Baird* as discussed in numbered paragraph 14. As a result of this discrepancy and lack of clarity, the Office Action does not afford Applicants a reasonable opportunity to analyze and/or formulate a reasonable response. More importantly, because of this rejection the final rejection is improper as applied.

The discrepancies in this rejection notwithstanding, however, Applicants do not believe a *prima facie* case of obviousness is established under Official Notice.

As Applicants have established above, claim 1 is distinguishable over the disclosure of *Montanari*. Because claim 7 depends from claim 1, it follows therefore, that this claim is distinguishable for at least the same reasons discussed with respect to claim 1. Moreover, claim 1 is further distinguishable over the applied reference for the additional features recited therein.

In addition to the first work identity recited in claims 1 and 6, claim 7 is directed to an embodiment where a second work identity of a material quantity includes washing of at least one of the production units, said second work identity of a material quantity having no source and no destination. The Examiner alleges that this feature while not expressly or implicitly disclosed in *Montanari* is still obvious in light of the knowledge attributed to one of ordinary skill in the art. However, because *Montanari* does not disclose or suggest registering events in the plant with the first work identity of the material quantity of the material, no instant and unquestionable demonstration of well-known facts which support the taking of Official Notice concerning the features of claim 7 can be reasonably applied.

While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979). See MPEP §2144.03, 8th ed., August 2001, Rev. July 2008.

Based on the discussion above, Applicants believe that the taking of Official Notice is improper and have hereby timely challenged its application. However, if the Examiner believes that the rejection of claim 7 is proper, Applicants request that the Examiner either:

- (a) Provide another Office Action withdrawing the Official Notice rejection, and applying a suitable reference cited against the claimed features; or
- (b) provide an affidavit or suitable reference attesting to all the elements taken as Official Notice.

Conclusion

Based on the foregoing amendments and remarks, Applicants respectfully submit that claims 1-7 are allowable and this application is in condition for allowance. In the event any unresolved issues remain, the Examiner is invited to contact Applicants representative identified below.

Respectfully submitted,

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